Chapter 11
Implementing Regulatory and Non-Regulatory Programs

11.1   Introduction

This chapter discusses key aspects of implementing regulatory and non-regulatory programs. Implementing such programs to protect and manage wetlands is Step 3 in the four-step framework discussed in this volume (Figure 11-1).
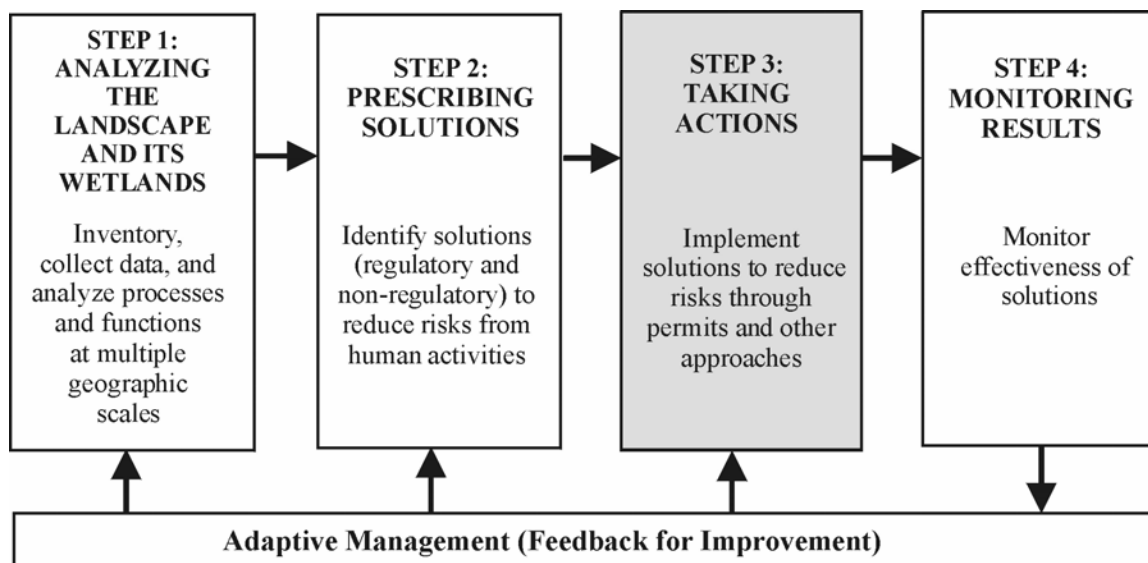

Figure 11-1. Implementing regulatory and non-regulatory approaches is Step 3 in the four-step framework presented in this volume.

11.2   Implementing a Regulatory Program

The single most important element in ensuring effective implementation of a regulatory program is having adequately trained staff. It can also be important to have educational materials for applicants and citizens.

11.2.1   Adequately Trained Staff

Most critical area regulations pertaining to wetlands allow for some discretion in applying the regulations to site-specific situations. Even when regulations are written in

a prescriptive fashion, many applicants and/or their consultants will make a case for why their projects should be treated differently. In many instances, a consultant will be an individual with extensive experience and credentials in wetland science, and it can be difficult for a local planner to respond in a reasonable and appropriate manner to requests for differential treatment. Additionally, while most applicants and their consultants provide accurate and complete information, occasionally a planner will be confronted with information that is inaccurate or incomplete. It is critical that the planning staff responsible for implementing wetland regulations have the knowledge to be able to effectively review submitted information and determine if it is accurate and complete.

To effectively implement a wetland regulatory program, staff should have at least a basic knowledge of the following topics:

- Wetland delineation;

- Wetland rating;

- Wetland function assessment;

- Potential impacts to wetlands from different types of development projects; and

- Wetland mitigation, including site selection and design, monitoring, maintenance, etc.

While some larger jurisdictions can afford to have a wetlands specialist on staff, most local jurisdictions have to rely on staff who wear many hats and who do not have the background or time to learn all that they need to know to effectively administer wetland regulations. To address this situation, many jurisdictions contract with a third-party consultant to provide the expertise needed to review submitted documents; field check delineations, ratings, and function assessments; and provide recommendations for approval, denial, or conditioning of permits.

11.2.2 Educational Materials

Many landowners and project applicants find it difficult to understand regulations and the requirements for application submittals. Additionally, many landowners do not understand why wetlands are important and why regulations are needed. Brochures and other informational materials that explain why wetlands are important, why regulations are necessary, and how applicants can get assistance can be very helpful and save planning staff a lot of time.

While general materials on some of these topics are available from federal and state agencies, locally developed materials may be the most useful.

11.3 Implementing a Non-Regulatory Program

Implementing local comprehensive plan directives for non-regulatory actions requires the establishment of a program framework, in the same way that regulatory controls require a program with dedicated staff, coordination, and funding. Actions to conserve, preserve, or restore lands that have been identified in Green Infrastructure plans or comprehensive plans (discussed in Chapters 6 and 7) require certain program elements for implementation. Components of a non-regulatory program (mentioned earlier in Chapter 9) include:

- Program staffing – coordinator, support staff, site management;

- Identification, mapping, and prioritization of geographic areas where non-regulatory tools will be applied;

- Funding mechanism(s) for conducting locally sponsored project actions;

- Incentive tools for engaging landowner participation;

- Education and technical outreach to the public and landowners;

- Project partners to help locally sponsored projects; and

- Monitoring of project sites and overall program success.

An overview of each of these program components is provided below.

For more information about setting up a non-regulatory program, see *Designing Wetland Preservation Programs for Local Governments: A Guide to Non-Regulatory Protection* (Ecology publication #92-18). This publication is slightly dated but still offers a general discussion of some of these components.

11.3.1 Staffing a Non-Regulatory Program

A non-regulatory program should have a dedicated staff coordinator. The role of the coordinator is to oversee implementation of the program by addressing such tasks as:

- Identifying appropriate sites for preservation and restoration;

- Working with landowners to apply better conservation practices;

- Establishing and updating incentive and funding programs;

- Engaging in education and outreach activities;

- Providing technical assistance for non-regulatory actions;

- Overseeing voluntary action projects sponsored by the local jurisdiction by raising grant funds, forming partnerships for assistance, shaping technical design, conducting site monitoring, etc.;

- Supervising support staff or volunteers within the program; and

- Coordinating with other departments.

How many of these tasks the coordinator will need to perform will depend on the size of the program and whether there are other staff employed by the local jurisdiction. This will reflect the capacity of the local government based on its size and its emphasis on using a non-regulatory approach.

Along with staff to implement the program components, there will usually need to be a recipient department, such as parks or public works, to receive the project sites and manage them over the long term. The alternative would be for the property to be passed to a state agency or non-profit land trust. However, state agencies may not be willing to accept any new properties to manage, and land trust organizations will require a management endowment. There are different ways to address this issue; the solutions will depend on whether the local jurisdiction buys lands in full fee and wishes to own and manage them over time. If not, some other entity such as a land trust partner might hold the land or a conservation easement in perpetuity. The land trust may even be willing to manage the lands as well.

11.3.2   Mapping and Prioritizing Sites

Site mapping and prioritization will have begun during the earlier planning stages, ideally with the background of a landscape analysis and directives from a Green Infrastructure plan that help to prioritize known project sites (see Chapters 5 and 6 for further discussion). If these plans have not been completed by the local jurisdiction, then the acquisition and restoration program could operate more opportunistically, or the jurisdiction could decide on potential project areas based on technical reports and studies that point to desirable sites. In either case, projects will usually need to be prioritized for sequential implementation.

Additional review and strategizing will probably be needed as implementation of the non-regulatory program begins. This might involve sorting through the various subbasins or sensitive landscape areas within the entire management area to focus on sites with immediate threats or opportunities, and deciding what projects can be funded over the immediate fiscal period. Prioritizing will likely be conducted on an ongoing basis as funding, staff, and opportunities fluctuate.

11.3.3 Establishing Funding Mechanisms and Landowner Incentive Tools

Funding mechanisms and landowner incentives were reviewed in Chapter 9. These tools play an essential role in non-regulatory programs. Having a funding tool is an absolute necessity to a local government that wishes to conduct voluntary preservation and restoration projects. Without a local funding source to provide a match, state and federal grant programs cannot be accessed. Lists of funding programs are provided in *Exploring Wetlands Stewardship: A Reference Guide for Assisting Washington Landowners and Communities* (Rubey 2004).

One very strong funding tool is the Conservation Futures Levy. This levy can be implemented by legislative ordinance and a portion of the funds dedicated to preservation and restoration projects (see Chapter 9 for further details).

Landowner incentives are also essential for engaging citizens in voluntary conservation actions and are discussed in detail in Chapter 9. In particular, local jurisdictions may wish to consider the value of establishing a watershed-based Public Benefit Rating System (PBRS) to implement their Current Use Taxation Program for "Natural" Open Space. The results of a landscape assessment can be integrated into a PBRS program as discussed in Chapter 9.

When incorporating preservation and restoration in order to implement a Green Infrastructure plan, it is particularly appropriate to utilize local infrastructure funds such as special purpose district levies, in-lieu fees, and direct general fund appropriations.

11.3.4 Educating the Public

Education is an initial and ongoing need as part of implementing non-regulatory programs. Education is also vital for Green Infrastructure planning or the development of a comprehensive plan element to direct non-regulatory efforts (as discussed in Chapters 6 and 7). Often decision-makers and the public view the upfront expenditures required to implement a non-regulatory effort as unjustified without factoring in the long-term costs of building infrastructure or the tax savings resulting from open space (see Chapter 6 for information on these fiscal savings).

Education is essential to providing the public with an accurate understanding of why non-regulatory programs are valuable to the community, as well as the landscape, and how people can become involved in non-regulatory activities. Education and outreach efforts are key factors in increasing enrollment in incentive programs. They encourage the public to get involved through voluntary actions either on their own property or by supporting local projects (for example, through monitoring of sites). In so doing, educational efforts can also improve support for regulatory programs.

11.3.5 Creating Partnerships for Locally Sponsored Projects

While landowner incentives are important, direct preservation of key critical areas is also essential to maintaining landscape processes through time. As discussed in Chapter 9, preservation employs the permanent protection of land through either full fee title ownership of all property rights, or partial ownership of the development and/or use rights of the land through application of a conservation easement. Completing these types of transactions can be complex and take time. Local governments often benefit from partnerships with other agencies or organizations to accomplish preservation projects.

Land trusts offer the services of brokering land acquisitions, raising acquisition funds, and marketing tax benefits to landowners. Land trusts protect land permanently, they work directly with landowners to secure the land transaction, they are knowledgeable about the land resource and the tax advantages of land preservation, and they are perceived as non-adversarial by landowners (see Appendix 9-A.) Land trusts often engage the voluntary assistance of retired resource professionals who can provide technical help with site assessments and monitoring.

Additionally, a national land trust called the Trust for Public Land will assist in securing properties for governments when funding is pending and the window of opportunity to preserve a parcel is short. TPL releases the property to the jurisdiction when funding is available. Information on land trust partners and other partners, as well as funding program opportunities, can be found in the publication *Exploring Wetlands Stewardship: A Reference Guide for Assisting Washington Landowners and Communities* (Rubey 2004).

State and federal agencies are also excellent partners to assist with non-regulatory efforts. These agencies can help with securing grant funding for projects. They can also offer technical knowledge about wetland functions, restoration techniques, and long-term management. Agency assistance is provided at no charge to the local jurisdiction.

Either internal coordination or **internal partnerships** will also be needed between planning staff and site management staff (such as parks or public works departments) who may be the recipients of lands that have been purchased and/or restored. As mentioned earlier, site ownership and management may be handled by an external partner such as a land trust or state agency.

Partnerships with other **non-profit organizations** such as Audubon or Ducks Unlimited may be essential to completing site monitoring tasks (such as bird counts on restored wetlands) and for implementing actual site restoration plans.

11.3.6 Monitoring

When implementing a program for preserving and/or restoring wetlands, the local jurisdiction will be concerned with monitoring at both the site level and the program level.

At the site level, local governments will:

- Allocate incoming Conservation Futures dollars, or other funds, to secure properties;

- Engage in restoration tasks such as breaching dikes, removing exotic plants, planting vegetation, etc.; and

- Monitor site conditions and manage preserved and restored lands.

At the program level, they will:

- Target annual preservation and restoration site completion goals for progress with achieving the objectives of Green Infrastructure plans or conservation plans;

- Enroll landowners in incentive programs such as current use taxation;

- Educate citizens about local stewardship activities; and

- Offer technical assistance.

Monitoring the effectiveness of these efforts provides an essential feedback loop for making course corrections on project sites and for revising practices used to implement programs. Monitoring is discussed in more detail in Chapter 12.